

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Noreen Jean Renier,)
)
Plaintiff,)
) **Case Number: 07-61602**
)
vs.) **Chapter 7**
)
John Merrell,)
)
Defendant)

**MOTION FOR VIOLATION OF AUTOMATIC STAY AND CREDITOR
MISCONDUCT**

Plaintiff, NOREEN JEAN RENIER, by and through her undersigned counsel, hereby moves the Court for an award of damages against Defendant, JOHN MERRELL, for a violation of automatic stay and alleges the following:

- 1) Plaintiff filed for an Order of Relief under Chapter 7 of Title 11 on August 28, 2007.
- 2) Defendant is listed as a creditor in Plaintiff's bankruptcy petition under Schedule F.
- 3) Plaintiff was discharged on March 31, 2008.
- 4) The aforementioned case is currently pending before this Court for a hearing on January 11, 2010, 9:30 AM, on the Trustee's motion of abandonment filed October 8, 2009, and objected to by the Defendant.
- 5) The gravamen of this motion is that despite Plaintiff's filing of bankruptcy, Defendant has willfully and continually communicated with Plaintiff's

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potential customers and clients, as well as actual customers and clients, about her bankruptcy, her debt, her income producing, business activity, and what they should do about it through the bankruptcy Court.(Exhibits "A", "B", "C", and "D").

- 6) The Defendant has accomplished this through the misappropriation of the title of her book, *A Mind For Murder* (a copyright asset of the bankruptcy estate, and the subject of the up coming abandonment hearing) as a website, <http://www.amindformurder.com>, to which he refers any one attempting to access her website, where he has compiled misinformation, disinformation, distortion, and falsehood to discredit her, to publicly vilify her for filing bankruptcy, and to attempt to interfere with and destroy her livelihood.
- 7) The Defendant, since the filing of Plaintiff's bankruptcy and the Automatic Stay, has willfully continued, without abatement, to use the misappropriated website of paragraph six(6), to continue his actions in Paragraph six(6), as well as, to communicate such material to the media, to people who employed the plaintiff, and to people who said nice things about the Plaintiff's work.

COUNT 1; AUTOMATIC STAY APPLIES TO THE DEFENDANT

- 8) Section 362 stays action to collect a debt. Specifically, Section 362(a)(6) protects Plaintiff from creditors that are acting in "any capacity" to collect, assess, or recover a claim against her that arose before the commencement of the bankruptcy proceeding.
- 9) Defendant is enjoined by the automatic stay from creditor attempts, in any

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capacity, to collect a debt.

COUNT II: THE COLLECTION OF A DEBT IN ANY CAPACITY BY DEFENDANT VIOLATES AUTOMATIC STAY

- 10) Once creditor receives notice of a Chapter 7 bankruptcy filing, creditor has an affirmative duty to undo its violations of automatic stay.
- 11) Defendant has not ceased his activities described in paragraphs five(5), six(6), and seven(7) above.
- 12) There can be no doubt that Defendant had knowledge of the Plaintiff's bankruptcy case.
- 13) Defendant is listed as a creditor in Plaintiff's bankruptcy petition under Schedule F.
- 14) Defendants actions are in direct violation of the Automatic Stay.

COUNT III: VIOLATION OF THE STAY WAS WILLFUL

- 15) Defendant has acted with blatant disregard to Court rules and procedures
- 16) Defendant was listed as a creditor on Defendant's filed bankruptcy petition and has filed responsive materials in the bankruptcy proceeding.
- 17) Defendant, deliberately intended his actions that violated the stay.
- 18) Defendant willfully violated the stay, because he knew, as a creditor, that the Stay had been invoked, and because he deliberately intended his actions that violated the Stay.

COUNT IV: PLAINTIFF WAS INJURED BY DEFENDANTS CREDITOR MISCONDUCT

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- 19) Defendant has deliberately committed the acts of paragraphs five(5), six(6), and seven (7) supra, with the willful intent to injure the Plaintiff.
- 20) Plaintiff filed for bankruptcy, and believed that she was relieved from the pressure and harassment from creditors seeking, “in any capacity”, to collect their claims, and that she was afforded the “breathing spell” and the “fresh start” contemplated for the debtor by the Bankruptcy Code.
- 21) Defendant, however, by his actions, has failed to abide by the Automatic Stay, has pressured and harassed Plaintiff, has interrupted her “breathing spell”, has interdicted her “fresh start”, and has left Plaintiff suffering from emotional distress.
- 22) Plaintiff has been injured by Defendant’s actions.

DAMAGES

Wherefore, Section 362(k)(1) provides that the Court shall award an individual her costs and attorneys fees, in addition to actual damages. The debtor’s damages include:

- a) Plaintiff’s out-of-pocket expenses to cover the filing fee.
- b) Plaintiff’s reasonable Attorney’s Fees.
- c) Plaintiff, additionally, has lost precious time from her personal and professional life, has lost business and sales, while attempting to defend herself from the actions of the Defendant.

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d) Plaintiff, lastly, has suffered interruption, annoyance, and continuing emotional anxiety and physical stress as she proceeds with her Chapter 7 Bankruptcy filing and further proceedings before the Court.

Since Defendant's actions were willful, and in violation of the Automatic Stay, the Court is respectfully urged to find the Defendant, JOHN MERRELL, in contempt/violation of the Automatic Stay; to order the Defendant, JOHN MERRELL, to abandon and cease using the website which misappropriated the title of Plaintiff's book, "A Mind for Murder"; to order the Defendant, ROBERT MERRELL, to cease any further communication, whether on a website, the internet, a blog, or otherwise which relates or refers to the Plaintiff's Bankruptcy, her debts, and her financial affairs arising under her Bankruptcy, and, accordingly, to award damages to the Plaintiff.

Dated this 10th day of February, 2010.

By: /s/ Russell P. Robertson, Jr.

VA State Bar: 06884
Russell P. Robertson, Jr.
PO Box 321
Forest, VA 24551
Phone: (434) 299-5567

CERTIFICATION OF SERVICE

I, Russell P. Robertson, Jr. Attorney, for the Plaintiff/debtor, Noreen Jean Renier, certify that on this date of February 19, 2010, I mailed a copy of this pleading along with the Notice of hearing to the Defendant/Creditor's attorney: Mitchell R. Garbee, Esquire
P.O. Box 778
Lynchburg, Virginia , 24505

/s/Russell P. Robertson, Jr.

Russell P. Robertson, Jr.